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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/509,574

09/29/2004

Toshimitsu Baba

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WENDEROTH, LIND & PONACK, L.L.P.  
2033 K STREET N. W.  
SUITE 800  
WASHINGTON, DC 20006-1021

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/509,574

Applicant(s)

BABA ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,7,10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-5, 7, 10-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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Claims 1, 4-5, 7, 10-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the response filed 11/13/07, applicant amend claim 1 to add the limitation "wherein the water content is not more than 30% and not less than 7% so that soybean 7s protein can be detected by SDS-PAGE". This limitation is not supported by the original disclosure. The specification does not disclose a correlation between the amount of water at the completion of expansion and the detection by SDS-Page.

Claims 1, 4-5, 7, 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niwano et al in view of Youngquist and Spicer.

Niwano et al disclose a method of preparing shaped food product. The process comprises the step of expanding hydrated dough comprising soybean protein by heating.. The heating is done by oven or microwave irradiation. The dough comprises protein and starchy substances such as corn starch, potato starch, sweet potato starch, wheat starch and modified starch. Example 16 discloses that the dough is heated in an oven until the water content is in the range of 25-30%. ( see col. 2 lines 30-33, 48-50, col. 5 lines 45-55, col. 6 lines 58-60 and the examples.)

Niwano et al do not disclose the protein is soybean 7s protein, drying the dough after heating, the amount of protein and starchy substance as claimed and drying under the temperature as claimed.

Youngquist discloses a shaped textured protein food product. Youngquist teaches the use of 7s soybean protein as an excellent binder for textured protein food products.

Spicer discloses a process of making an expanded product. Spicer teaches to dry the dough after expansion at a temperature in the range of about 110-120 degree F. ( see col. 2 lines 31-35, col. 4 lines 10-11)

Niwano et al disclose any soybean protein can be used in the dough. Thus, it would have been obvious to one skilled in the to use the 7s soybean protein because it is a known soybean protein used in the food product as taught by Youngquist. One would be motivated to use the 7s soybean protein because Youngquist teaches that the protein is an excellent binder which mean it has good gelling property and Niwano et al prefers protein with good gelling property. It would have been obvious to dry the dough after heating depending on the moisture content wanted in the final product; such parameter can readily be determined by one skilled in the art. It would have been obvious to one skilled in the art to determine the appropriate temperature depending on the time of drying and the moisture content wanted. One skilled in the art can readily determine such parameter without undue experimentation. The temperature range claimed is conventional as evidence by Spicer. The moisture content of the dough and the final product vary with the type of product. It would have been within the routine determination of one skilled in the art to determine the appropriate water content of the dough and product being made. In any event, Niwano et al disclose embodiment in which the dough after heating has a water content within the range claimed. It would

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also have been obvious to determine the appropriate amount of protein and starchy substance depending on the type of product made. The amounts are result-effective variable which can be determined through routine experimentation to obtain product having optimum flavor, taste, texture and nutrition. As to detection by SDS-PAGE, it is not seen how this is patentably significant in the process. In any event, the Niwano et al process in combination with Youngquist teaches a process for expanding dough containing 7S protein and the water content after heating can be within the range claimed; thus, it is obvious the protein can be detected.

In the response filed 11/13/07, applicant argues the references relied upon do not teach or suggest the problem that is specific to soybean 7S protein. This argument is not persuasive. It is not necessary to show in a 103 rejection to add an ingredient for the same purpose or for solving the same problem as disclosed. It is presented in the rejection above the reason why one skilled in the art would want to use 7s protein in the Niwano et al process. Applicant has not argued why this usage would not have been obvious.

Applicant's arguments filed 11/13/07 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 25, 2008

  
LIEN T. TRAN  
PRIMARY EXAMINER  
Group 1700